

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0056
Gaming Card Excise Tax
Tax Period 2001-2004**

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ISSUE

I. Gaming Card Excise Tax-Imposition

Authority: IC § 6-8.1-5-1(b), IC § 4-32-15-1, IC § 4-3-2-20(a), IC § 4-32-15-2, IC § 6-8.1-5-4, 45 IAC 18-4-2.

The taxpayer protested the imposition of gaming card excise tax.

II. Tax Administration- Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protested the imposition of the ten percent negligence penalty.

Statement of Facts

The taxpayer is a distributor of gaming paraphernalia such as bingo supplies, pull tabs, punchboards, tip boards, ticket masters (dispensers of pull-tabs), and various games of chance. The taxpayer sold its products from a traditional location and over the internet to both qualified and non qualified organizations. After an audit, the Indiana Department of Revenue (department) assessed additional gaming card excise tax, penalty, and interest against the taxpayer for the years 2001-2004. The taxpayer protested this assessment. A hearing was held and this Letter of Findings results.

I. Gaming Card Excise Tax-Imposition

Discussion

Indiana imposes a gaming card excise tax at IC § 4-32-15-1 as follows:

An excise tax is imposed on the distribution of pull tabs, punchboards, and tip boards in the amount of ten percent (10[percent]) of the price paid by the qualified organization that purchases the pull tabs, punchboards, and tip boards.

A “qualified organization” is defined at IC § 4-3-2-20(a) as follows:

- (1) a bona fide religious, educational, senior citizens, veterans, or civic organization operating in Indiana that:
 - (A) operates without profit to the organization’s members;
 - (B) is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - (C) has been continuously in existence in Indiana for at least five (5) years or is affiliated with a parent organization that has been in existence in Indiana for at least five (5) years; income (as defined in Section 527 of the Internal Revenue Code).or

The gaming card excise tax is imposed at the time of the distribution of the gaming devices. IC § 4-32-15-2.

Notices of proposed assessments are prima facie evidence that the department’s claim for unpaid taxes is valid. IC § 6-8.1-5-1(b). The taxpayer has the burden of proving that the department incorrectly imposed the assessment. id. Taxpayers are required to keep adequate books and records so that the department can determine the proper tax owed to the state. IC § 6-8.1-5-4.

The department set out the records that distributors are required to keep for the gaming excise tax at 45 IAC 18-4-2 as follows:

- (a) An entity licensed as a manufacturer or distributor must keep records satisfactory to the department. The records must include the following:
 - (1) Sales invoices, including the following:
 - (A) Each licensee must use a general sales invoice which is:
 - (i) numbered consecutively; and
 - (ii) prepared in at least two (2) parts, one being issued to the customer and the other retained in an invoice file.
 - (B) Each licensee must use a general sales invoice which sets out the following information:
 - (i) The date of the sale.
 - (ii) The customer name and business address.
 - (iii) A full description of each item sold, including the serial numbers of the products sold.
 - (iv) The quantity and sales price of each item.
 - (v) The manufacturer’s or distributor’s license number.
 - (vi) The customer’s license number.
 - (vii) The gaming card excise tax due on the sale.
 - (2) Credit memoranda prepared in the same detail as sales invoices.
 - (3) A sales journal containing at least the following, by calendar month:
 - (A) The date of sale.

- (B) The invoice number of the sale.
- (C) The customer name or account number.
- (D) The total amount of the invoice.
- (E) The total amount of the gaming card excise tax due on the sale.
- (4) A complete list of the persons representing the licensee.
- (5) Purchase records documenting that all bingo supplies, equipment, pull-tabs, punchboards, and tip boards were purchased from either a licensed manufacturer or another licensed distributor.
 - (b) A serial number printed on an item sold must be identifiable with the sales invoice reflecting the sale of the specific item.
 - (c) The gross amount of sales to each customer must be kept on a calendar month basis.
 - (d) Records are required to be maintained until the later of the following:
 - (1) Four (4) years after the year in which they are created.
 - (2) The end of the audit if such records are under audit.

The taxpayer's books and records were not in conformity with the law. The books and records were not adequate to allow the department to determine the correct amount of tax. Therefore, the department had no option but to prepare an estimate based upon the best information available. The taxpayer did not produce any documentation to substantiate its contention that the department's estimate was inaccurate.

Finding

The taxpayer's protest is denied.

II. Tax Administration- Ten Percent Negligence Penalty

Discussion

The taxpayer protested the imposition of the ten percent (10[percent]) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

During the period of the audit, the taxpayer ignored the law and departmental instructions for the payment of gaming card excise tax. The taxpayer's written protest indicated that the taxpayer

knew of his duty to collect and remit the gaming card excise tax during the taxperiod. The taxpayer's inattention to this duty resulted in the tax assessment. This breach of the taxpayer's duty constituted negligence.

Finding

The taxpayer's protest is denied.

KMA/JMM/DK/06/21/03